

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FOURTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION No.16610 of 1996

Between:

1.Syed Budden, S/o Sri Burhan,
A.P.Residentail School. Enkoor, Khammam Dist.
2.Patnana balakrishna Rao, S/o P.Venu,
A.P.Residential School, S.M.Puram, Srikakulam Dist.
3.SK.Ahmed, S/o Jeelani,
A.P.Residential School, Wyra, Khammam Dist. **PETITIONERS**

AND

1.A.P.Residential Education Institution Society,
rep by its Secretary, Kandara Complex, Abids, Hyd.
2.The Vice-Chairman, A.P.R.E.I.Society and
Secretary to Govt. Education Dept.,
Secretariat Bldgs, Saifabad, Hyd.**RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction more particularly one in the nature of writ of mandamus to declare the illegal and arbitrary the action of the respondents in not converting the petitioners to last grade service on completion of the 5 years of full time contingent service as was done in cases of similarly placed persons and other full time contingent employees are treated as last grade employee on completion of 5 years of full time contingent services and entitled to pay fixation, seniority, etc on and with effect from such conversion.

Counsel for the Petitioner: MR.D.V.SITHARAM MURTHY

Counsel for the Respondents: MR.VIJAYA BHASKAR MOOLA

The Court made the following:

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ORAL ORDER:

The petitioners, three in number, who claim to represent another 148 contingent employees, have filed the Writ Petition, in substance, seeking conversion of their status from contingent employment to last grade service in the first respondent-society with effect from the date on which each of these employees had completed five years of service as full time contingent employees and for the incidental and consequential monetary and other benefits on the basis of such conversion.

The petitioners and other contingent employees, whom they claim to represent, have been appointed in various categories as Sweepers, Scavengers, Kitchen Helpers, Watchmen or Gardeners on full time contingent basis during 18-11-1983 to 05-11-1985. Petitioners plead that their recruitment, as contingent employees, was after a due process of selection and sponsorship of their names by the employment exchange. On employment as full time contingent employees they were initially paid a basic pay of Rs.238/- with allowances, which amount was subsequently enhanced from time to time. All of them were working in the residential schools under the administrative control of the first respondent-society.

In recognition of long term contingent employment in the first respondent-society, the State Government, which is the authority which fully funds the first respondent-society, had been issuing orders for conversion of contingent employment into last grade service.

Though it is neither pleaded, urged nor demonstrated before this Court, it is reasonable to infer that conversion is not the legitimate mode of recruitment to the last grade service. Possibly recruitment to the last grade service in the first respondent-society is by direct recruitment as there is no other class of service below last grade service in the classification of posts in the first respondent-society. Conversion of contingent employment into last grade service is therefore a departure from the ordained and authorized method of recruitment to the last grade service in the first respondent-society. Conversion involves exclusion of the legitimate

aspirations of persons not in contingent employment, for consideration to recruitment to last grade service in the first respondent-society. Having regard to the fact that a number of persons are continuing in contingent employment for long periods of time in the first respondent-society, the State Government may legitimately permit conversion of such contingent employment into last grade service without following the mandated procedure of direct recruitment to the service. However, orders of conversion cannot be issued as a regular course, thus legitimizing absorption of casual employees into the legitimate mode of recruitment to the last grade service. Regular filling up of the last grade service in the first respondent-society only by conversion would amount to systematic subversion of the legal environment. Continuing such a practice or pursuing such a practice as a regular course of conduct would negate the regularity and integrity of the recruitment process in the first respondent-society.

It would appear that in G.O.Ms.No.9, Finance & Planning (FW.PRC.VI) Department, dated 08-01-1981, the State Government permitted conversion of full time contingent posts which have been in existence for a period of five years, after 1st April, 1981, into regular Government posts in the last grade services. Pursuant to the orders of the Government in G.O.Ms.No.9, the first respondent-society by proceedings dated 19-01-1989 permitted conversion, and consequently five individuals who were working as watchman, sweeper etc., since October and November, 1983, were permitted to be treated as members of the last grade service on the respective dates of their completion of five years service as contingent employees.

It is stated by the learned Counsel for the petitioner that the genesis for the proceedings dated 19-1-1989 is a resolution of the Board of the first respondent dated 8-3-1984. In the resolution dated 8-3-1984, the Board of the first respondent resolved as under:

“The Board approved the conversion of full time contingent posts which have been in existence for a period of 5 years or more as on 1-4-1981 into regular posts.”

On a true and fair construction of the Board resolution, the approval accorded by the Board is for a one-time exercise in respect of contingent posts that have been in existence for a period of five years or more as on 1-4-1981. On the basis of the

Board resolution dated 8-3-1984, the first respondent had issued orders on 11-12-1987, 2-2-1988, 5-1-1989 and 3-4-1989, apart from the one dated 19-1-1989, according the benefits of conversion to contingent employees on the respective dates on which each of such employees had completed five years of regular service. The first respondent had thus introduced a mechanism whereby conversion of contingent employees has been made the exclusive mode of recruitment to the last grade service. Neither the petitioners nor the respondents have chosen to inform this Court as to what are the governing rules concerning recruitment to the last grade service in the first respondent-society. The petitioners claim equality of treatment on par with the earlier tranche of conversions during the years 1987 to 1989.

In so far as the petitioners are concerned, the facts are as under:

The State Government issued another order in G.O.Rt.No.1413, Education/Prog-3 Department, dated 20-08-1993, accepting the proposals of the first respondent-society and permitting conversion of 157 contingent posts into last grade service posts. It would appear that the Government also addressed a letter dated 19-01-1994 to the first respondent clarifying that the last grade scale shall be applicable to the 157 contingent employees, who were accorded the benefits in G.O.Rt.No.1413, only after the conversion of their posts into last grade service and with effect from the date of issue of G.O.Rt.No.1413. On the basis of these clarifications of the State Government, the first respondent-society issued proceedings dated 25-1-1994, converting 151 contingent posts into last grade service with effect from 20-08-1993, which is the date of issue of G.O.Rt.No.1413. Out of the 157 contingent posts permitted to be converted into last grade service in G.O.Rt.No.1413, five contingent employees at Sl.Nos.152 to 156 appear to have been regularized pursuant to earlier orders issued in G.O.Ms.No.98, Education (Prog.I) Department, dated 8-4-1993, and another contingent employee at Sl.No.157 had resigned. Therefore, the benefit under the proceedings of the first respondent was confined to the balance 151 contingent employees in which the petitioners are also included.

The learned Counsel for the petitioner contends that the petitioners have been singled out as a class for invidious and hostile discrimination vis-à-vis., other contingent employees who had been granted the benefits of conversion and grant of regular scales and pay in the last grade service with effect from the dates on which they completed five years of service as contingent employees.

On a scrutiny of the material on record, including the chronology of events adverted to above, it is discernible that as per the resolution of the Board of the first respondent dated 08-03-1984 which appears to have been passed in pursuance of G.O.Ms.No.9, dated 8-1-1981, conversion of full time contingent posts into regular posts, was a one time exercise confined to the posts which had been in existence for a period of five years or more, as on 01-04-1981. As apparent from the resolution dated 08-03-1984, of the Board of the first respondent, in total disregard of the fundamental principles of constitutional governance and a rule of law conduct, the first respondent-society has however converted the one time exercise of conversion of contingent employment into last grade service, pursuant to the resolution dated 08-03-1984, into a regular exercise of conversion of contingent employment into last grade service. This had become a regular feature of illegal conduct by the first respondent. The State Government was either not sensitized by the first respondent as to the regularity with which it was violating the fundamental law or even if so sensitized was itself insensitive to the commands of the Constitution and the law. Resultantly either by mutual ignorance of law or a mutual intent that law and statutory rules do not deserve compliance, the first respondent's conduct of converting contingent employment into last grade service on a consistent basis was neither rectified, invalidated nor any action taken against the first respondent by the State Government.

The petitioners draw a signal from this consistent conduct of the first respondent and that signal is that conversion of contingent employment of five years standing into last grade service is the only legitimate method of recruitment to the last grade service. The petitioners have not sensitized this Court as to the appropriate rules by which recruitment to the last grade service is governed. They have come to believe that on putting in five years of service as full time contingent employees they are entitled to conversion to last grade service and to the benefits of such an exercise. In view of the clarification contained in the State Government's letter dated 19-01-1994, however, the petitioners are granted the benefit of conversion into last grade service only with effect from 20-8-1993, the date of issue of G.O.Rt.No.1413. The petitioners have neither impleaded the State Government nor have challenged the Government letter dated 19-1-1994. Nothing has been placed before this Court to permit an inference that the first respondent-society is a free and independent agent to

increase the cadre of the last grade service. Perhaps, since the Government fully funds the establishment and other expenditure of the first respondent-society, it is the Government, which is competent to approve or sanction the regular posts in the first respondent-society. There would be a predetermined number of posts in the last grade service in the first respondent-society. Addition to this cadre by conversion of contingent employment into last grade service would necessarily mean increasing the cadre strength of last grade service. As this Court has not been shown that the power to increase the cadre of any service in the first respondent-society vests with the first respondent society, and in view of the irresistible inference possible from the fact that an order of the Government is required to permit conversion from contingent employment to last grade service, it must be concluded that the first respondent is incompetent to *sui generis* permit conversion of contingent employment into last grade service. Earlier instances of illegal orders of the first respondent converting contingent employment to last grade service without authority of law and without competence cannot afford a legitimate precedent for claiming identical treatment, by the petitioners.

On the analysis above, there are no merits in the Writ Petition and the Writ Petition is accordingly dismissed. No costs.

04-08-2004

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To:

1.A.P.Residential Education Institution Society,
rep by its Secretary, Kandara Complex, Abids, Hyd.

2.The Vice-Chairman, A.P.R.E.I.Society and

Secretary to Govt. Education Dept.,

Secretariat Bldgs, Saifabad, Hyd.

3.Two CD copies.

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